



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-881]

Certain Windshield Wiper Devices and Components Thereof

Notice of Commission Decision to Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") final initial determination ("final ID") issued on May 8, 2014, finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June

11, 2013, based on a complaint filed by complainants Federal-Mogul Corporation of Southfield, Michigan and Federal-Mogul S.A. of Aubange, Belgium (collectively “Federal-Mogul”). 78 *FR* 35050-51 (June 11, 2013). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain windshield wiper devices and components thereof by reason of infringement of claims 1-14 of U.S. Patent No. 8,347,449 (“the ’449 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s Notice of Investigation named as respondents Trico Corporation of Rochester Hills, Michigan (“Trico Corp.”); Trico Products of Brownsville, Texas (“Trico Products”); and Trico Components, SA de CV of Matamoros, Mexico (collectively “Trico”). 78 *FR* at 35050. The Office of Unfair Import Investigations was also named as a party. *Id.* The Notice of Investigation was later amended to correct the names of Trico Corp. and Trico Products to Trico Products Corporation of New York. 79 *FR* 9922-923 (Feb. 21, 2014); *see* Order No. 27 (Jan. 22, 2014).

On May 8, 2014, the ALJ issued his final ID, finding a violation of section 337. In particular, the final ID finds that Trico’s accused products infringe claims 1 and 5 of the ’449 patent, but that Trico’s accused products do not infringe claims 2-4 and 6-14. The ALJ also found that the asserted claims of the ’449 patent are not invalid for obviousness under 35 U.S.C. 103 or for lack of written description under 35 U.S.C. 112. The ALJ further found that Federal-Mogul has satisfied the domestic industry requirement.

The final ID also includes the ALJ’s recommended determination (“RD”) on remedy and bonding. The ALJ recommended in his RD that the appropriate remedy is a limited exclusion order barring entry of Trico’s infringing windshield wiper devices and components thereof. The ALJ did not recommend issuance of a cease and desist order against any respondent. The ALJ

recommended the imposition of a bond of \$0.75 per imported unit during the period of Presidential review.

On May 21, 2014, Trico filed a petition for review concerning, *inter alia*, the final ID's finding of violation with respect to claims 1 and 5 of the '449 patent. In particular, Trico requested review of the final ID's construction of the claim limitation "detachable," the final ID's finding that claims 1 and 5 are infringed, and the final ID's finding that the asserted claims of the '449 patent are not invalid for obviousness. Also on May 21, 2014, Federal-Mogul and the Commission investigative attorney ("IA") each filed a petition for review of certain aspects of the final ID concerning the ALJ's finding of no violation with respect to claims 2-4 and 6-14 of the '449 patent. In particular, Federal-Mogul and the IA requested that the Commission review the final ID's construction of the claim limitation "clamping" and the final ID's finding of non-infringement with respect to claims 2-4 and 6-14 of the '449 patent.

On May 29, 2014, Federal-Mogul filed a response to Trico's petition for review. Also on May 29, 2014, Trico filed a combined response to Federal-Mogul's and the IA's petitions for review. Further on May 29, 2014, the IA filed a joint response to the private parties' petitions.

None of the parties filed a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). Furthermore, no responses were filed by the public in response to the post-RD Commission Notice issued on May 9, 2014. *See* Notice of Request for Statements on the Public Interest, 79 *FR* 27934-35 (May 9, 2014).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part.

Specifically, the Commission has determined to review the ALJ's omission of the caveat

“without damage” in the construction of the limitations “detachable therefrom,” “detachably engage,” “detachably connected,” and “releasably secure” recited in claims 1, 2, 8, and 12 of the ’449 patent. The Commission has also determined to review the final ID’s construction of the “clamping” limitation recited in claims 2, 3, 6, 7, and 12 of the ’449 patent.

With respect to infringement, the Commission has determined to review the final ID’s finding that the accused OE blade products satisfy the “detachable” limitation of claims 1 and 5 of the ’449 patent. The Commission has also determined to review the final ID’s finding of no infringement with respect to claims 2-4 and 6-7 of the ’449 patent. The Commission has further determined to review the final ID’s finding of no infringement with respect to claims 8-14 of the ’449 patent.

The Commission has also determined to review the final ID’s finding that the asserted domestic industry products satisfy the technical prong of the domestic industry requirement with respect to claim 1 of the ’449 patent. The Commission has further determined to review the final ID’s finding that Trico failed to show by clear and convincing evidence that the asserted claims of the ’449 patent are obvious in view of U.S. Patent No. 5,713,099 in combination with U.S. Patent No. 6,799,348.

The Commission has determined not to review the remaining issues decided in the final ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Address whether the claim limitations “clamping features,” “clamping members,” and “clamping edge portions” recited in the asserted claims of the ’449 patent should be

construed independently of the generic term “clamping” and, if so, how should the Commission construe those claim limitations in light of the intrinsic evidence.

2. Address whether the accused wiper blade products satisfy the “clamping features” limitation recited in claim 2 and the “clamping members” limitation recited in claims 3, 6, and 7 of the ’449 patent under the proper construction of those limitations. Please specifically discuss this issue in relation to your position concerning whether claim limitations “clamping features” and “clamping members” should be construed independently of the generic term “clamping.”
3. Address whether the accused wiper blade products infringe claims 8-14 of the ’449 patent in light of the fact that the Commission has determined to review the construction of the claim limitations “detachably connected” (relevant to claims 8-11), “releasably secure” (relevant to claims 12-14), and “clamping edge portions” (relevant to claims 12-14). Regarding the latter claim limitation, please specifically discuss this issue in relation to your position concerning whether the claim limitation “clamping edge portions” should be construed independently of the generic term “clamping.”

The parties have been invited to brief only these discrete issues, as enumerated above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of

such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 Fed. Reg. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation, including the Office of Unfair Import Investigations, are requested to file written submissions on the issues identified in this

notice. Parties to the investigation, including the Office of Unfair Import Investigations, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on July 22, 2014. Initial submissions are limited to 70 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on July 30, 2014. Reply submissions are limited to 25 pages, not including any attachments or exhibits related to discussion of the public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-881") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the

Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 9, 2014.

Jennifer D. Rohrbach,
Supervisory Attorney.

[FR Doc. 2014-16526 Filed 07/14/2014 at 8:45 am; Publication Date: 07/15/2014]